



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

September 24, 2024

Via e-mail only to: rjlandau@rjlps.com

Dr. Richard J. Landau, Esq.
RJ Landau Partners PLLC
5340 Plymouth Rd #200
Ann Arbor, Michigan 48105

Re: OCR Docket Number 15-24-1184

Dear Dr. Landau:

This letter is to notify you of the disposition of the above-referenced complaint filed on December 18, 2023, with the U.S. Department of Education, Office for Civil Rights (OCR), against Ann Arbor Public Schools (the District) alleging that the District discriminated against a student (the Student) and other students on the basis of national origin (shared Muslim/Arab Palestinian ancestry). OCR opened the following allegations:

1. The District failed to respond to harassment of the Student and other students, including a counselor telling the Student on [redacted content], 2023 that she does not “negotiate with terrorists.”
2. The District retaliated against the Student when the Student’s school counselor and other counselors stopped interacting with him after the Student and the Student’s family complained about the incident of [redacted content].

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of federal financial assistance. Title VI also prohibits retaliation. The regulation implementing Title VI, at 34 C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. As a recipient of federal financial assistance from the Department of Education, the District must comply with Title VI.

During its investigation to date, OCR reviewed information provided by the Complainant and the District, including notes and correspondence documenting the District’s internal investigation of the counselor’s alleged remark, as well as public comments at school board meetings during the same time. Before OCR completed its investigation, the District expressed an interest in resolving allegation 1 pursuant to Section 302 of OCR’s *Case Processing Manual*. With respect

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to allegation 2, OCR has determined that the evidence is insufficient to support a finding that the District retaliated against the Student in violation of the regulation implementing Title VI as alleged. The bases for OCR's determination are explained below.

Summary of OCR's Investigation to Date

Background

In the 2023-2024 school year, the Student was enrolled in the [redacted content] in the District. He is Muslim with Arab/Palestinian ancestry.

Incident involving Counselor's remark

On [redacted content], 2023 a teacher brought the Student to work [redacted text] for the rest of the class. The staff's notes about this incident state that the Student was "disturbing class" and "he was having difficulty working in class", but no formal discipline was logged for the Student's underlying behavior. Although the Student was supposed to be working [redacted content], the Student went into the office of a counselor (the Counselor) [redacted content]. The Student asked whether the Counselor had a fridge in her office, and she replied that she did. The Student asked for a soda and for the Counselor's personal water from the Counselor's fridge. The Counselor said no. According to the Student's written statement from the next day, he had asked if the Counselor had a drink or if he could get a drink, and she had said no to both requests; and when he asked why, she replied, "I am not negotiating with a terrorist." In contrast, the Counselor reported that the Student promised that he would be quiet if she gave him water, to which she replied, "I don't negotiate with terrorists." The [redacted content] stated that she could hear what the Student said but not what the Counselor said to the Student; [redacted content] otherwise confirmed the Counselor's account.

According to the Student and his family, the Student then asked the Counselor multiple times, "Are you sure that's what you mean? She replied affirmatively more than once and explained that [redacted content]. The Student replied that the Counselor's family members are not Arab and asked, "Don't you think that's offensive?"

The Counselor and [redacted content] reported that the Student then approached [redacted content], exclaiming, "Did you hear what [the Counselor] said?" and repeating the remark. The Student likewise wrote in his statement, "Then I told [redacted content]." [Redacted content] replied, "I doubt the Counselor said that." Although the Student reported that the Counselor told [redacted content] what she said and that [redacted content] replied that [redacted content], [redacted content] denied [redacted content] or that [redacted content].

The Counselor then apologized to the Student for the remark, saying that it was not appropriate to say to him. Although the Student's written statement does not mention the apology, the [redacted content] notes from a meeting with the Student's family the next day suggest that the Counselor apologized. There were no other witnesses to the incident.

Reports of incident and subsequent District response

The next day after the incident, the Student's father and [redacted content] met with the assistant principal to convey what had happened. The Student's [redacted content] also e-mailed the superintendent at the time and members of the school board that same day to request an investigation into the Counselor's use of the "racially motivated term" and sent a similar e-mail to the full board five days later.

The principal took a written statement from the Student on the day after the incident and interviewed the Counselor and [redacted content] the following day. The investigation concluded by [redacted content], 2023 [redacted content].

When OCR asked the District to identify any notice provided to the Student and his family of the findings of the internal investigation, the District pointed to a [redacted content], 2023, e-mail, where the District's Executive Director of K-8 and Middle-Level Education (the Administrator) conveyed to the counsel for the Student's family that the District had "investigated and addressed this personnel matter." Likewise, the District's interim superintendent had e-mailed the [redacted content] about the conclusion of the investigation, stating that a "thorough investigation was conducted, consistent with our district process for addressing personnel matters."

Impact on the Student

The principal conducted numerous check-ins with the Student in the weeks following the incident to see how he was doing and did not note anything that would have indicated the Student was experiencing any ongoing difficulties stemming from the Counselor's remark.

However, the complaint [redacted content] submitted on [redacted content], 2023 to the full school board noted that the Student "[redacted content] because he doesn't feel welcomed or safe at school." Likewise, the Administrator spoke with the Student's family on [redacted content], 2023 and the Administrator's notes reflect the family's report that the Student was experiencing "discomfort" at school" due to a "ripple effect from other teachers from outing the Counselor" but the notes did not further elaborate on that "ripple effect." The District offered the Student the possibility of changing schools.

As for the climate among staff at the School, the principal's notes reflect that on [redacted content] the School received "various phone calls from angry individuals" and that [redacted content] about the situation." The next day, the principal convened a staff meeting where "possible concerns were addressed" and where the Administrator was present.

Reports regarding broader climate

By letter dated [redacted content], 2023, an attorney retained by the Student's family reiterated the earlier reports from the Student's family. Counsel for the family later reported to OCR that this incident "is just the latest incident involving discriminatory remarks made by Ann Arbor Public School employees related to national origin, religion, and ethnicity. Indeed, Ann Arbor Public Schools has a long history of tolerating discriminatory remarks such as these against Arabs and Muslims in the district."

At three different meetings of the District’s Board of Education (on December 6, 13, and 20, 2023), a resolution calling for a ceasefire in Gaza was pending with the Board. Numerous commenters expressed their opposing opinions on the resolution. A few commenters made generalized comments about anti-Muslim and anti-Palestinian bias within the District, without specifying any details related to particular incidents. At the [redacted content], 2023, meeting, one parent reported that [redacted content]. She said that her Muslim/Arab children were not being checked in on or supported, despite unusual misbehavior and her older child saying she did not want to go to school. A few commenters expressed their dismay that a counselor [redacted content] student a terrorist, and one mentioned that a student called another student “a bomber”. Another commenter requested that the District take actions to “foster a culture whereby Muslim, Jewish and students of color are not afraid of the consequences of reporting harassment from teachers, school officials and fellow students.”

In response to OCR’s request for any internal reports or complaints of alleged harassment or discrimination on the basis of national origin, the District listed only reports related to the incident involving the Counselor’s remark, indicating that the District had no records of any other such internal complaints as of the date of its February 21, 2024, response.

Employee and student discipline

In response to OCR’s request for data related to discipline of employees for misconduct against students over the 2022-2023 and 2023-2024 school years, the District identified four instances of discipline. One involved the Counselor’s statements to the Student, which is the subject of this complaint. There is another incident involving the use of the n-word by a staff member towards an elementary student, which the District was investigating as of May 2024. The District’s records also show two investigated incidents involving two different employees’ using the n-word with regard to a Black student and then again in front of other District employees. The records provided by the District to date in this investigation do not show whether the District addressed these two incidents as Title VI concerns.

In response to OCR’s request for data related to student discipline, the District provided a summary list of incidents from the last two school years that resulted in out-of-school or in-school suspension. There are no notes describing the incidents in the list, but the generic offense category is listed for each incident, and one of these is categorized as “620 Violation harassment,” which occurred a few times. The offenses in the District’s summary list are referred to by numeric codes (“620” in the cited example). At the beginning of the list, a key explains the offense category (such as “Violation harassment”) that corresponds to each numeric code. The information provided by the District to date does not reflect whether any of the listed incidents involve harassment prohibited by Title VI.

District’s Title VI policies and training

When asked to identify any policies or procedures governing the investigation of complaints of harassment and/or discrimination on the basis of national origin/shared ancestry, the District pointed to a general notice of non-discrimination and then provided links to its Title IX policies and procedures, which on their face are limited to sex discrimination.

The District's Rights and Responsibilities Handbook does identify the specific District staff who serve as compliance officers for "all student claims of harassment," including the Administrator for middle school students, and it does mention that students who have experienced harassment can "seek resolution of their complaint through the procedures that have been established by the school district."

During investigation, the District provided OCR with a new uniform grievance procedure, dated June 18, 2024, governing the investigation of internal complaints alleging violations of the District's general non-discrimination policy, its anti-bullying policy, as well as Title IX. In referencing the general non-discrimination policy, the procedure states that discrimination on the basis of race, color, and national origin is prohibited, but the procedure does not otherwise expressly address these grounds as protected under Title VI. For example, although the procedure contains a definition of sexual harassment, the procedure does not define a hostile environment on the basis of race, color, and national origin. The procedure limits potential complainants to students or employees of the District. The procedure outlines, on the one hand, an optional informal resolution process that need not be exhausted before initiating formal complaint procedures. Formal complaint procedures, on the other hand, begin with a written complaint, submitted either by (a) the complainant; or (b) an administrator who does so on behalf of the complainant when the complainant expresses an intent to file a complaint but is unable or unwilling to do so. The procedure additionally requires a District employee who reasonably believes that a violation of the District's nondiscrimination or anti-bullying policies has occurred to report that information to an administrator. That administrator must then immediately preserve evidence "in the event that a written complaint is filed." After describing standards for impartial investigation of the formal complaint and written notice of resolution, the procedure states that "[i]f a party is not satisfied [with the District's resolution], the party may file a complaint" with OCR.

OCR further observes that the District stated that it does not conduct training or hold informational sessions with the student community and/or District staff regarding students' rights under Title VI. Although the District's investigation of the incident was largely conducted by the principal, the District did not identify [redacted content] as one of the District staff responsible for investigating incidents of discrimination and harassment based on national origin/shared ancestry.

Applicable Regulatory Standards

Title VI Shared Ancestry Harassment

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies.

Title VI's protection from national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived shared ancestry or ethnic characteristics, such as students of Jewish, Palestinian, Muslim, Arab, and/or South Asian descent, or citizenship or residency in a country with a dominant religion or distinct religious identity, or their association with this national origin/ancestry. The existence of a hostile environment based on national origin that is created, encouraged, accepted, tolerated, or left

uncorrected by a recipient constitutes discrimination on the basis of national origin in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to take prompt and effective action to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a recipient's education program or activity. Harassing acts need not be targeted at the complainant to create a hostile environment. The acts may be directed at anyone, and the harassment may also be based on association with others of a different race (the harassment might be referencing the race of a sibling or parent, for example, that is different from the race of the person being harassed whose access to the school's program is limited or denied).

The harassment must in most cases consist of more than casual or isolated incidents based on national origin to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the harassment, as well as the identity, number, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe or pervasive that it would have limited the ability of a reasonable person, of the same age and national origin as the victim, under the same circumstances, from participating in or benefiting from some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A recipient may be found to have violated Title VI if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a hostile environment based on national origin harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

A recipient violates Title VI if one of its agents, acting within the scope of their official duties, has treated an individual differently on the basis of national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the individual to participate in or benefit from the services, activities, or privileges provided by the recipient. If the alleged harasser is an agent or employee of a recipient, acting within the scope of their official duties, then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

Once a recipient has actual or constructive notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the

responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

Retaliation

The regulation implementing Title VI, at 34 C.F.R § 100.7(e), prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the regulation or because that individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulation.

The following three elements must be satisfied to establish a prima facie case of retaliation: 1) an individual engaged in a protected activity; and 2) an individual experienced an adverse action caused by the recipient; and 3) there is some evidence of a causal connection between the adverse action and the protected activity.

An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the individual's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. Under some factual circumstances, the promise of a benefit can be just as coercive as the threat of harm.

Analysis and Conclusion

The evidence to date reflects that the District had constructive notice of a hostile environment based on shared ancestry owing to the Counselor's status as an agent of the District. Additionally, the internal complaints arising from the remark made by the Counselor alleged that it reflected bias on the basis of a protected ground. The internal complaints, therefore, reasonably signaled that the District's Title VI obligations were at issue. Furthermore, commenters at District board meetings in December 2023 expressed that they had witnessed other instances of anti-Muslim and anti-Arab bias in the District and shared their dismay at what they had heard about the particular incident involving the Counselor's remark. These public comments further put the District on notice of a possible hostile environment for Muslim and Arab students more generally in the District.

The evidence to date indicates that the District investigated the incident involving the Counselor's remark as a disciplinary matter between the District and one of its employees. Although the District's investigation reflected that the Counselor's offensive remark was a one-time incident that the Counselor immediately apologized for and that there were no recurrences involving the Counselor, OCR is concerned that the District appears not to have assessed whether a hostile environment had emerged from the incident involving the Counselor and whether the incident had affected the school's and District's climate more broadly, beyond any effects on the Student alone, even after the District received notice, including at its Board meetings, that District community members perceived the incident as reflecting an escalation of animus directed at Muslim and Arab students.

Further, the evidence the District has produced to date does not reflect that it took steps reasonably calculated to redress any hostile environment for the Student and for other affected students or staff. The District documentation does not reflect that the District notified the Student or his family of the outcome of the District's evaluation of the incident or that the District offered the Student supports – other than an invitation to transfer schools – that were reasonably calculated to respond to notice the District received from [redacted content] where the Student felt unwelcome. Likewise, the evidence does not reflect that the District took steps to address the concerns reported to the District through phone calls to the school and testimony at the District board meetings.

OCR also notes with concern that the District's new June 2024 grievance procedure limits who can file an internal grievance and requires the District to respond only upon the filing of a written complaint, although the District's Title VI obligation to prevent recurrence of a hostile environment is not so limited: the District has a Title VI obligation to ensure that no hostile environment that violates Title VI is in operation when the District receives notice from anyone. In addition, OCR notes that the District's new June 2024 grievance procedure lacks a definition of what constitutes a hostile environment on the basis of race, color, and national origin and incorrectly suggests that a party has recourse to OCR only after exhausting the District's grievance procedure.

With respect to the Student's retaliation allegation, the weight of the evidence does not support a conclusion that the District retaliated against the Student. Although the Student alleged that District staff treated him adversely after reporting the harassment, OCR's review of the evidence did not confirm this allegation. As part of its [redacted content], and the Student therefore had access to [redacted content]. Additionally, the principal conducted numerous check-ins with the Student, but none of [redacted content] notes memorializing those meetings reflect concerns that District staff treated him adversely due to his reporting of the Counsel's remark. Accordingly, OCR finds there is insufficient evidence to establish a prima facie case of retaliation by the District against the Student in violation of Title VI, as alleged.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving allegation 1 prior to the conclusion of OCR's investigation, and OCR determined resolution was appropriate. The District signed the enclosed Resolution Agreement, which, when fully implemented, will address allegation 1 in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law

enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR looks forward to receiving the District's first monitoring report. For questions about implementation of the Agreement, please contact Mr. Jacob Oetama-Paul. He will oversee the monitoring and can be reached by telephone at (202) 987-1845 or by e-mail at Jacob.Oetama-Paul@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7640 or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Team Leader

Enclosure